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IN THE

Supreme Court of the United States

OCTOBER TERM—1958

No. 511

DEEP SEA TANKERS, LIMITED, in its own behalf, as owner of the S/T "RINCON HILLS", and as bailee of the cargo laden thereon, and SHELL OIL COMPANY, INCORPORATED, as charterer of said vessel,

Petitioners,

against

The steamtug "LONG BRANCH", the RAILWAY CARFLOATS Nos. 61 and 56, CENTRAL RAILROAD COMPANY OF NEW JERSEY, the steamtugs "AJAX" and "BJAX", the sand barges "A", "B" and "C", and METROPOLITAN SAND & GRAVEL CORPORATION,

Respondents.

(and three related causes)

REPLY BRIEF OF RESPONDENT, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, IN OPPOSITION TO PETITION OF DEEP SEA TANKERS, LIMITED, FOR CERTIORARI

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The respondent, The Central Railroad Company of New Jersey, has been served with a reply brief in connection with the petition of Deep Sea Tankers, Limited. This brief treats of no matter not contained in the original brief.

This respondent is aware that this Court, due to the importance of the cases before it and the congestion of its

calendars, is unable to exhaustively plumb the record involved in each case, for which certiorari is petitioned. Accordingly, the Court is forced to rely on the statements of counsel and the representations made both in the brief in support of the petition and the brief in opposition thereto.

The reply brief contains both argumentation and assertions with respect to the posture of this case before the Court. Respondent considers it improper to enter into extended argumentation in a reply brief; but, submits these few observations to clarify certain facts which have been distorted by petitioners.

(1) Petitioners (p. 2, Reply Brief) failed to meet respondent's observation with respect to the shocking wheel maneuver executed by the helmsman of the *Rincon Hills*. Obviously, the engine order is not executed by a helmsman; this does not detract one whit from the fact that, at the same time an order of "full ahead" was given and executed, the helmsman received an order of "hard left" but actually went "hard right", and the *Rincon Hills* went aground.

(2) As pointed out in respondent's brief in opposition to the petition (pp. 4-5), the petitioners cited certain language from the opinion of the Court of Appeals which, they claim, demonstrates that the Court of Appeals wrongly applied a criterion of "wilful fault" to the question of limitation of liability. This language, plucked from context, was set forth in petitioner's brief at page 9. Respondent noted that the language quoted by petitioner did not give the true import of the holding of the Appellate Court and proceeded to set forth language immediately preceding petitioner's quotation (Resp. Brief, pp. 4-5). Petitioner's rejoinder to this is to reprint their carefully selected quotation coupled with the still unsupported claim that the Court of Appeals applied a standard of "wilful fault".

To this the respondent, The Central Railroad Company of New Jersey, submits that a reading of the *entire* portion of the Court of Appeals opinion (Petitioner's Appendix, p. 28B) relating to this point, clearly sustains respondent's position that no fault, active or passive, wilful or by omission, was attributed to the respondent with respect to the alleged absence of tide tables or current charts aboard the tug.

Viewed in the light of this clear finding by the Court of Appeals it is obvious that the "legal issue" drummed up by petitioners (Petitioner's Brief, Pt. I) is a completely spurious one, entirely unsupported by the factual finding made.

(3) Page 5 of petitioner's reply brief contains an even more remarkable assertion with respect to the holding of the Court of Appeals. It reads:

> "The Court of Appeals, however, found that both flotillas blocked the *Rincon Hills*, but that the carfloats and scows were not *legally* responsible for blocking the *Rincon Hills* because they were passive instruments under the control of their respective tugs. *The distinction to be noted is that the tows were at fault.* They were not 'exonerated' in the sense used by respondents, but they could not be required to respond *in rem* for the damages to which they contributed." (Emphasis supplied.)

Apparently petitioner is saying that the Court of Appeals found the carfloats to be "at fault" but through the application of some legal legerdemain they were permitted to escape without paying their value to the limitation fund. What the Court of Appeals actually said was:

> "But, in the case before us, as in *Liverpool*, no fault whatever is attributable to the sand scows or to the carfloats. It is true that they made the flotillas more cumbersome, but it does not follow that they were at fault, and we hold that they were not" (Petitioner's Appendix, p. 35b).

(4) The brief of this respondent adverted to the confusion inherent in the English law on this point and suggested that that law did not sustain the sweeping propositions claimed by petitioners. When respondent mentioned in its brief that *The Harlow* (1922 Probate 175) concerned a tug and tow of five vessels, all of common ownership, which were involved in a collision, and all of which were directly held at fault, it pointed out that in the face of a demand for the surrender of the entire flotilla, the English court required the surrender only of the tug and the barge which had been in actual collision plus a second barge which had worsened the damage through its momentum.

Petitioners have this to say in response:

> "Respondent is in error; the court in the *Harlow* held that where *some vessels* in a tow contributed to the casualty by their momentum or *erratic movement*, even though caused by persons on the tug, such towed vessels must be surrendered" (p. 6, Petitioners Reply Brief). (Emphasis ours.)

The decision of the court in *The Harlow* contains nothing whatsoever to sustain the proposition that "erratic movement" would require the surrender of non-offending barges into a limitation fund. The language chosen by petitioner is of importance since the case at bar is a "crowding case" and not a collision case.

Since petitioners can cite no case where English courts have charged barges which did not come into contact with another vessel or increase the injured vessel's damage by their momentum, the words "erratic movement" are carefully chosen to bridge an otherwise formidable gap. But, even under English law, the decision in *The Harlow* stands for the proposition that barges which are not in contact and do not increase the damage by actual momentum are not required to be surrendered.

(5) Petitioners (on p. 6 of their Reply Brief) apparently adopt the position that the applicability of prin-

ciples of law to limitation situations is dependent upon the size or the scope of the maritime operations conducted by the party who seeks the benefits of the limitation of liability. They state:

> "But it is interesting to note that the respondents are primarily landbound carriers and operate their proportionally small amount of maritime equipment solely to supplement their railroad and construction operations. It is submitted, therefore, that the cases and propositions presented by the respondent on this point are inapplicable to the present case" (Pet. Reply Brief, p. 6).

Apparently, therefore, petitioners take the position that it is only the Goliaths of the shipping industry who are entitled to invoke the limitation statutes; maritime Davids are to be bereft of such protection. This unique view of limitation of liability is expressly rebutted by Section 188, Title 46 (R. S. 4289), which extends the protective mantle of the limitation statutes to—

> "all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters."

(6) While denying the respondent, The Central Railroad Company of New Jersey, the right to explore the legislative intent with respect to the limitation statutes, and the right to examine the judicial construction of those statutes, petitioners feel free to soar in the rarefied atmosphere of international uniformity. (See second full paragraph, p. 8, Petitioners Reply Brief.)

Point IV of petitioner's original brief in support of the petition for writ of certiorari dealt expressly with the desirability of "uniformity of International Maritime Laws" and urged that this Court grant certiorari on that basis. When the respondent, The Central Railroad Company of New Jersey, pointed out that this Court did not consider itself the proper medium by which international

uniformity could be achieved, the petitioners saw little inconsistency in abandoning the alleged need for the desirability of uniformity, stating:

> "Petitioners believe that a change is needed, not necessarily to follow the laws of a foreign nation *per se* but that the latter's laws on the subject are more in keeping with the realities of present day circumstances" (Petitioners Reply Brief, p. 9).

It would thus appear that petitioners tacitly admit that their plea for uniformity was but a subterfuge to induce this Court to consider a proposition, concerning which certiorari should not properly be granted. If petitioners imply that the laws of Great Britain and Canada are a new international maritime yardstick, then their plea for such uniformity should be addressed to the Executive branch. If, on the other hand, as would now seem to be the case, petitioners are pleading the laws of Great Britain and Canada as persuasive authority to induce this Court to uproot the established doctrines of American Limitation Law, then petitioners' talk of uniformity is merely camouflage.

(7) Supreme Court Rule 19 sets forth those criteria which this Court considers with respect to the advisability of granting petitions for certiorari. It is submitted that petitioners have utterly failed to establish that this cause has any relevancy to any of those criteria. Petitioners have claimed that confusion exists with respect to the limitation law as to the "flotilla theory"; respondents' brief establishes that there is no such confusion. Petitioners have claimed that the Court of Appeals has erroneously substituted a standard of "wilful fault" for "privity and knowledge" in limitation cases; respondents have demonstrated that petitioners are resorting to a mere semantic quibble and that the Court of Appeals has applied correctly the standards made applicable by statute and case law. Petitioners claim a conflict between Circuits; respondents

have demonstrated that such conflict is non-existent in view of the clear holding of the Court of Appeals for the Second Circuit that the alleged lack of tide tables and current charts show no fault whatsoever. Petitioners have claimed that principles of international uniformity should impel this Court to grant certiorari, but in the face of attack by respondents, have changed their position and now admit their citation of English and Canadian law to be but persuasive only.

It thus will be seen that the grounds which petitioners urge for the granting of certiorari are insubstantial and illusory.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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